

Appendix A

Financial Statements

UNITED STATES DEPARTMENT OF ENERGY

OFFICE OF CIVILIAN RADIOACTIVE WASTE MANAGEMENT

Financial Statements

September 30, 1998

**UNITED STATES DEPARTMENT OF ENERGY
OFFICE OF CIVILIAN RADIOACTIVE WASTE MANAGEMENT**

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OVERVIEW

Reporting Entity

The Nuclear Waste Policy Act of 1982 (Public Law 97-425) established the Office of Civilian Radioactive Waste Management (OCRWM) within the Department of Energy. OCRWM's mission is to manage and dispose of the nation's spent nuclear fuel and high-level radioactive waste. The Office provides leadership in developing and implementing strategies to accomplish this mission that assure public and worker health and safety, protect the environment, merit public confidence, and are economically viable.

The Nuclear Waste Policy Amendments Act of 1987 (Title V, Public Law 100-203) directed the Secretary of Energy to characterize only the Yucca Mountain site in Nevada to determine if it is suitable for a repository for spent nuclear fuel and high-level radioactive waste.

As of September 30, 1998, OCRWM employed 2,632 people. This included 168 OCRWM Federal staff, 17 Federal full-time equivalents (FTEs) at other DOE Headquarters offices, 4 Federal FTEs at the DOE Nevada Operations Office, 115 U.S. Geological Survey employees, and 2,328 contractor employees, including employees of national laboratories.

OCRWM is composed of a management center and two business centers organized to carry out two major projects.

The Yucca Mountain Site Characterization Project, located in Las Vegas, Nevada, oversees the scientific and technical investigation of Yucca Mountain, including:

- Addressing the major unresolved technical questions regarding the site;
- Constructing and operating the exploratory studies facility;
- Addressing those repository and waste package design elements that are critical to determining the feasibility and performance of the repository and the engineered barrier system;
- Preparing a final environmental impact statement to accompany the Secretarial site recommendation, should the site be found suitable; and
- Preparing and submitting a license application for repository construction to the Nuclear Regulatory Commission, should the President recommend and the Congress approve the Yucca Mountain site.

The Acceptance, Transportation, and Integration Project, located in Washington, D.C., focuses on the development of processes for the legal and physical transfer of commercial spent nuclear fuel to the Federal Government, pre-licensing discussions with the Nuclear Regulatory Commission for a non-site-specific interim storage facility, creation of a national capability for waste acceptance and transportation, and resolution of institutional issues with stakeholders.

OCRWM's Program Management Center provides program integration and management support to the Director, OCRWM, and to the two business centers. The management center, comprised of the Office of Program Management and Administration in Washington, D.C., and the Office of Quality Assurance in Las Vegas, Nevada, is responsible for program planning and administration, program management, technical and regulatory integration, quality assurance, institutional activities, resources and information management, and international waste management activities.

Fiscal Year 1998 Technical Performance

In its FY 1997 financial statements, OCRWM established four technical performance measures for FY 1998, all of which were completed during the fiscal year. The FY 1998 measures were:

- Completing the viability assessment analyses for licensing and constructing a geologic repository at the Yucca Mountain site. The assessment will consist of four key components:
 - A design and operational concept of the repository;
 - An assessment of the performance of that concept in the geologic setting;
 - A plan and cost estimate to construct and operate the repository; and
 - A plan and an estimate of the costs to complete a license application.

RESULTS: The viability assessment was completed as of September 30, 1998, and included the requisite four key components described in the success measure. On December 18, 1999, the Secretary of Energy submitted it to the President and Congress and released it to the public. Completion of the viability assessment also satisfies the corresponding critical milestone for FY 1998 in the Federal Managers' Financial Integrity Act (FMFIA) Fiscal Year 1997 Report.

- Completing generic, non-site-specific interim storage facility work and addressing long lead-time issues related to storage of waste including design, engineering, and safety analyses.

RESULTS: A design and safety analysis for a Centralized Interim Storage Facility (CISF) was completed and a Topical Safety Analysis Report (TSAR) was submitted to the Nuclear Regulatory Commission for final review on September 23, 1998. The CISF was designed as an above-ground facility, but without a specific site for construction.

- Developing a market-driven approach that uses private sector management and operational capabilities to provide waste acceptance and transportation services. Issuing a revised draft request for proposals.

RESULTS: A revised draft Request for Proposals (RFP) was issued for comment in November 1997. A revised draft incorporating comments was Noticed in the Federal Register on September 17, 1998.

- Completing a revised Policy and Procedure for implementation of Section 180(c) of the Nuclear Waste Policy Act.

RESULTS: A Notice of Revised Proposed Policy and Procedure for implementation of Section 180(c) of the Nuclear Waste Policy Act was issued on April 30, 1998.

Fiscal Year 1999 Technical Performance Measures

The following have been identified as technical performance measures for OCRWM in FY 1999.

- Publish a draft Environmental Impact Statement in FY 1999. The Nuclear Waste Policy Act requires a Final Environmental Impact Statement to accompany the site recommendation.
- Complete repository and waste package design inputs for use in total system performance assessment for the repository license application.

- Complete peer review of the total system performance assessment in FY 1999 to provide formal, independent evaluation and critique.

Fiscal Year 1998 Financial Performance

OCRWM is required by the NWPA to recover the full cost of the Program. Full cost recovery is based on the balance between program cost and income. The Program's cost was estimated in the Analysis of the Total System Life Cycle Cost of the Civilian Radioactive Waste Management Program, dated December 1998. Nuclear Waste Fund Fee Adequacy: An Assessment, also issued in December 1998, indicated that the fee charged to utilities is adequate under the assumptions used in the analysis. Even with the uncertainties described in the assessment, there is no need to adjust the fee at this time.

Program funding comes from the Nuclear Waste Fund (NWF) and the Defense Nuclear Waste Disposal Appropriation (DNWDA). The NWF consists of fees paid by the owners and generators of spent nuclear fuel from civilian reactors, in accordance with provisions of their contracts with the Department of Energy (DOE) for disposal services. NWF assets in excess of those appropriated to pay program costs are invested in U.S. Treasury securities. The DNWDA was established by the Congress to fund the cost of disposal of high-level radioactive waste resulting from atomic energy defense activities. As of September 30, 1998, cumulative accrued revenue from fees, including the DNWDA, totaled approximately \$11.57 billion, and cumulative interest earnings and other revenue totaled approximately \$5.84 billion. Cumulative expenditures from appropriations, including direct appropriations to the Nuclear Regulatory Commission, the now defunct Office of the Nuclear Waste Negotiator, and the Nuclear Waste Technical Review Board, totaled approximately \$6.0 billion.

As of September 30, 1998, the U.S. Treasury securities held by OCRWM had a market value of \$8.61 billion. The net income from investments for fiscal year 1998 was \$466.7 million, including \$466.6 million in interest earnings and \$49,891 in net gains on the sale of securities. Over the last year, based on market value, OCRWM's investments returned 17.9 percent compared to 12.5 percent for the average long-term Treasury security mutual fund.

OCRWM's primary financial performance goal is to ensure that future spending needs can be met. Therefore, OCRWM has adopted the asset-liability matching approach to investing used by pension funds and insurance companies. By matching investments to anticipated funding requirements, OCRWM reduces the risk that changes in interest rates will adversely affect the value of its investments, ensures that identified spending projections will be met, and makes investments at the most favorable rates currently available.

In its FY 1997 financial statements, OCRWM established the following financial performance measure for FY 1998:

- To increase from 6 to at least 12 the number of years in the 2004–2028 period, for which invested Program assets match anticipated liabilities.

RESULTS: In FY 1998, 11 years were fully matched and \$1 billion was invested to partially match four other years. During the fiscal year, OCRWM conducted an extensive review of its investment strategy. The purchase of long-term zero-coupon Treasury securities was suspended for several months pending the outcome of that assessment. The review revalidated every aspect of OCRWM's investment strategy, and the purchase of long-term zero-coupon Treasury securities to match the Program's long-term liabilities has resumed.

FY 1999 Financial Performance Measures

- To maintain an adequate liquid reserve of approximately \$2 billion in short-term Treasury securities, with an average maturity of 3 years, to meet unexpected spending needs.
- To reallocate existing investments and invest any additional surpluses to match the revised Program spending profile, as defined in the FY 1998 TSLCC, through at least 2019.

Year 2000 (Y2K) Compliance

OCRWM has assigned high priority to ensuring that its computer systems operate on and after January 1, 2000. Significant efforts and resources are being invested in the assessment, renovation, validation as Y2K-compliant, and implementation of both mission-critical and non-mission-critical systems by March 31, 1999.

As of January 22, 1999, OCRWM's four mission-critical systems had been validated as Y2K-compliant and implemented.

OCRWM is also addressing the Y2K compliance of its 3,225 non-mission-critical systems. OCRWM has 214 non-mission-critical software applications, all of which have been assessed and 173 have been certified Y2K-compliant. OCRWM has 10 telephone systems, of which 7 have been assessed and 5 have been certified Y2K-compliant. OCRWM has 32 networks, all of which have been assessed and 30 have been certified Y2K-compliant. OCRWM has 164 hosts or servers, of which 161 have been assessed and 125 have been certified Y2K-compliant. OCRWM has 2,712 workstations, all of which have been assessed and 2,242 have been certified Y2K-compliant. OCRWM has 22 building systems, of which 20 have been assessed and 8 have been certified Y2K compliant. OCRWM has 20 pieces of laboratory equipment, none of which have yet been assessed or certified. There are also 51 embedded systems, of which 47 have been assessed and 36 have been certified Y2K-compliant. All non-mission-critical systems are scheduled to meet Y2K compliance requirements by March 31, 1999.

There is a concern that the telephone switch equipment, voice mail systems, and paging systems for the Nevada Test Site at the Nevada Operations Office (NVO) are not Y2K-compliant. NVO provides operations support (personnel and procurement) for OCRWM's Yucca Mountain Site Characterization Office (YMSCO), creating the potential for impact on YMSCO operations. However, NVO's new telecommunications contractor, GTE, has contractual requirements to upgrade all components of the NVO systems noted to Y2K compliance by June 30, 1999.

The following table estimates OCRWM's Y2K costs; it includes the estimated costs of hardware and software procurements and upgrades, as well as burdened labor costs to investigate, test, renovate, and validate Y2K compliance for all systems and software.

Year 2000 Cost Estimates in Thousands

SUB-ORG	1996 Y2K Costs	1997 Y2K Costs	1998 Y2K Costs	1999 Y2K Costs	2000 Y2K Costs	TOTAL Y2K Costs
OCRWM-HQ	\$0	\$ 283	\$160	\$ 75	\$ 25	\$ 543
Kenrob	\$0	\$2,448	\$ 72	\$285	\$150	\$2,955
M&O	\$0	\$3,802	\$372	\$562	\$148	\$4,884
OCRWM-YMSCO	\$0	\$ 857	\$ 25	\$ 25	\$ 25	\$ 932
TOTAL:						\$9,314

The required contingency plans for mission-critical systems are being developed and will be completed by March 31, 1999. The contingency planning process entails the identification of the most likely worst-case scenarios and plans for their mitigation. The contingency plans will be incorporated into OCRWM's business continuity plans scheduled for completion by June 30, 1999.

Limitations of the Financial Statements

The accompanying financial statements were prepared to report the financial position, net costs, changes in net position, budgetary resources, and financing of the Nuclear Waste Fund and the Defense Nuclear Waste Disposal appropriation, pursuant to requirements of the NWPA, as amended. While the statements have been prepared from the books and records of the NWF and the Defense Nuclear Waste Disposal appropriation, in accordance with the formats prescribed by the Office of Management and Budget, the statements are different from the financial reports used to monitor and control budgetary resources, which are prepared from the same books and records.

The statements should be read with the realization that they relate to the Nuclear Waste Fund and the Defense Nuclear Waste Disposal appropriation; that unfunded liabilities reported in the financial statements cannot be liquidated without the enactment of an appropriation; and that the payment of all liabilities, other than those resulting from contractual obligations, can be abrogated by the U.S. Department of Energy.



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Independent Auditors' Report on Financial Statements

United States Department of Energy
Office of Civilian Radioactive Waste Management:

We have audited the accompanying balance sheet of the Office of Civilian Radioactive Waste Management (OCRWM) as of September 30, 1998, and the related statement of net cost, statement of changes in net position, statement of budgetary resources, and statement of financing for the year then ended. These financial statements are the responsibility of OCRWM's management. Our responsibility is to express an opinion on these financial statements based on our audit.

We conducted our audit in accordance with generally accepted auditing standards; the standards applicable to financial audits contained in Government Auditing Standards, issued by the Comptroller General of the United States; and Office of Management and Budget Bulletin No. 98-08, Audit Requirements for Federal Financial Statements, except for those portions of the Bulletin that relate to the Federal Financial Management Improvement Act (FFMIA) of 1996. The Department of Energy Office of Inspector General is responsible for determining compliance with FFMIA. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audit provides a reasonable basis for our opinion.

As described in note 2, the financial statements were prepared in conformity with the hierarchy of accounting principles and standards approved by the principals of the Federal Accounting Standards Advisory Board. This hierarchy is a comprehensive basis of accounting other than generally accepted accounting principles.

As discussed in note 12 to the financial statements, OCRWM is involved as a defendant in several matters of litigation relating to its inability to accept waste by the January 31, 1998 date specified in the Nuclear Waste Policy Act of 1982, as amended. The Court of Appeals for the District of Columbia Circuit has ruled that the Standard Contract (1) imposes an unconditional obligation on DOE to initiate waste acceptance by January 31, 1998 and (2) offers a potentially adequate remedy for the failure of DOE to meet this obligation. It is too early to evaluate the ultimate impact on OCRWM of claims based on the decisions in these cases and resolution of such claims will involve highly fact-specific and individualized decisions about the costs incurred by each contract holder as a result of the delay of DOE in meeting its obligation under the Standard Contract. However, DOE has estimated possible damages to be between \$500 million and \$1 billion, if all utilities file claims. Some utility representatives have estimated damages totaling \$45 billion. OCRWM has recorded an estimated liability of \$500 million relating to these matters in the financial statements for the year ended September 30, 1998.



In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of the Office of Civilian Radioactive Waste Management as of September 30, 1998, and its net costs, changes in net position, budgetary resources, and reconciliation of net costs to budgetary obligations for the year then ended on the basis of accounting described in note 2.

As discussed in note 2 to the financial statements, OCRWM implemented Statements of Federal Financial Accounting Standards No 4, *Managerial Cost Accounting Concepts and Standards for the Federal Government* and No. 7, *Accounting for Revenue and Other Financing Sources and Concepts for Reconciling Budgetary and Financial Accounting*, effective October 1, 1997.

In accordance with *Government Auditing Standards*, we have also issued reports dated January 15, 1999 on our consideration of OCRWM's internal control over financial reporting and on its compliance with laws and regulations.

Our audit was made for the purpose of forming an opinion on OCRWM's financial statements, taken as a whole. The information presented in the Overview is not a required part of the basic financial statements but is supplementary information required by Office of Management and Budget Bulletin No. 97-01, *Form and Content of Agency Financial Statements*. We have considered whether this information is materially inconsistent with the principal financial statements. Such information has not been subjected to the auditing procedures applied in the audit of the financial statements and, accordingly, we do not express an opinion on it. The performance information included in the Overview is addressed in our auditors' report on internal controls over financial reporting in accordance with OMB Bulletin No. 98-08.

KPMG LLP

January 15, 1999

UNITED STATES DEPARTMENT OF ENERGY
OFFICE OF CIVILIAN RADIOACTIVE WASTE MANAGEMENT
Balance Sheet
As of September 30, 1998
(Dollars in thousands)

Assets

Intragovernmental:

Fund balance with Treasury (note 3)	\$	90,765
Investments (note 4)		8,610,666
Accounts receivable:		
Receivable from Department of Energy (notes 2 and 11)		1,175,211
kWh fees (note 5)		9,848
Accrued investment interest (note 4)		83,857
Other assets		278

Total intragovernmental assets 9,970,625

Accounts receivable (note 5):

kWh fees		144,321
One-time spent fuel fees		880,489
Interest from one-time spent fuel fees		1,415,345
General property, plant, and equipment, net (note 6)		28,112
Other assets		993

Total Assets \$ 12,439,885

Liabilities

Liabilities covered by budgetary resources:

Intragovernmental:

Accounts payable	\$	4,253
Deferred fees revenue (note 14)		1,373,036

Total intragovernmental liabilities 1,377,289

Accounts payable		47,437
Deferred revenues (note 14)		9,794,866
Contract holdback		390
Other governmental liabilities		3,390

Total liabilities covered by budgetary resources 11,223,372

Liabilities not covered by budgetary resources:

Intragovernmental:

Pension and other actuarial liabilities		3,740
Other unfunded governmental liabilities		3,451
Estimated liability for waste acceptance obligation (note 12)		500,000

Total liabilities not covered by budgetary resources 507,191

Total Liabilities 11,730,563

Commitments and contingencies (notes 12 and 13)

Net position:

Unexpended appropriations (note 7)		142,371
Cumulative results of operations		(327,030)

Total net position before unrealized gain (184,659)

Unrealized gain on investments available for sale 893,981

Total net position 709,322

Total liabilities and net position \$ 12,439,885

The accompanying notes are an integral part of these statements.

UNITED STATES DEPARTMENT OF ENERGY
OFFICE OF CIVILIAN RADIOACTIVE WASTE MANAGEMENT
Statement of Net Cost
For the year ended September 30, 1998
(Dollars in thousands)

Costs:	
First repository (notes 1 and 2)	\$ <u>343,902</u>
All other programs:	
Program support	55,444
Transfer appropriation (note 9)	21,600
Waste acceptance, storage and transportation	7,096
Imputed costs (note 10)	<u>1,102</u>
Total all other programs	<u>85,242</u>
Total cost of operations	429,144
Estimated liability for waste acceptance obligation (note 12)	500,000
Less: earned revenue (note 14)	<u>(428,042)</u>
Net cost of operations	\$ <u><u>501,102</u></u>

The accompanying notes are an integral part of these statements.

UNITED STATES DEPARTMENT OF ENERGY
OFFICE OF CIVILIAN RADIOACTIVE WASTE MANAGEMENT
Statement of Changes in Net Position
For the year ended September 30, 1998
(Dollars in thousands)

Net cost of operations	\$ (501,102)
Financing Sources (other than exchange revenues):	
Imputed financing	<u>1,102</u>
Net results of operations	(500,000)
Prior period adjustment (note 15)	<u>149,822</u>
Net change in cumulative results of operations	(350,178)
Decrease in unobligated balances	(55,823)
Change in unrealized gain on investments	<u>774,018</u>
Change in net Position	368,017
Net position - beginning of the period	<u>341,305</u>
Net position - end of period	<u>\$ 709,322</u>

The accompanying notes are an integral part of these statements.

UNITED STATES DEPARTMENT OF ENERGY
OFFICE OF CIVILIAN RADIOACTIVE WASTE MANAGEMENT
Statement of Budgetary Resources
For the year ended September 30, 1998
(Dollars in thousands)

Budgetary resources:

Budgetary authority	\$	346,000
Unobligated balance:		
Brought forward October 1		107,075
Adjustments:		
Temporarily restricted from FY 96 authority (note 3)		(85,000)
Total budgetary resources	\$	<u>368,075</u>

Status of budgetary resources

Obligations incurred	\$	353,545
Unobligated balances available:		
Apportioned, balance currently available (note 7)		14,530
Total status of budgetary resources	\$	<u>368,075</u>

Outlays

Obligations incurred	\$	353,545
Obligated balance net, beginning of period		138,396
Obligated balance transferred, net		(18)
Less: obligated balance net, end of period		(97,985)
Total outlays	\$	<u>393,938</u>

The accompanying notes are an integral part of these statements.

UNITED STATES DEPARTMENT OF ENERGY
OFFICE OF CIVILIAN RADIOACTIVE WASTE MANAGEMENT
Statement of Financing
For the year ended September 30, 1998
(Dollars in thousands)

Resources used to finance activities

Budgetary resources obligated for orders and delivery of goods and services to be received or benefits to be provided to others	\$ 353,545
Less earned revenue	(428,042)
Less offsetting collections, recoveries of prior year authority	(19)
Transfer-in (note 9)	21,600
Total resources used to finance activities	<u>(52,916)</u>

Relationship of total resources to the net cost of operations

<i>Deduct resources used to fund items not part of the net cost of operations:</i>	
Increase or (decrease) in budgetary resources obligated to order goods and services not yet received or benefits not yet provided	44,949
Resources that fund expenses recognized in prior periods	3,363
Resources that finance the acquisition of assets or liquidation of liabilities	(5,918)
Total resources used to fund items not part of the net cost of operations	<u>42,394</u>
Resources Used to Finance the Net Cost of Operations	<u>(10,522)</u>

Costs that do not generate resources

Components of net cost of operations that do not require or generate resources during the reporting period:

<i>Expenses or exchange revenue related to the disposition of assets or liabilities, or allocation of their costs over time:</i>	
Expenses related to use of assets	10,371
Losses or (gains) from revaluation of assets and liabilities	189
Decrease or (increase) in exchange revenue receivable from the public	(38)
Subtotal	<u>10,522</u>
Estimated liability for waste acceptance obligation (note 12)	500,000
Other net cost components that do not require or generate resources during the reporting period	<u>1,102</u>
Total components of net cost of operations that do not generate resources during the reporting period	<u>511,624</u>
Net cost of operations	\$ <u>501,102</u>

The accompanying notes are an integral part of these statements.

**UNITED STATES DEPARTMENT OF ENERGY
OFFICE OF CIVILIAN RADIOACTIVE WASTE MANAGEMENT**

Notes to Financial Statements

September 30, 1998

(Dollars in thousands unless otherwise noted)

(1) Legislative Background

The Nuclear Waste Policy Act (NWPAct) was signed into law on January 7, 1983. The NWPAct establishes a framework for the financing, siting, licensing, operating and decommissioning of one or more mined geologic repositories for the Nation's spent nuclear fuel and high-level radioactive waste which is to be carried out by the Department of Energy's (DOE) Office of Civilian Radioactive Waste Management (OCRWM). In addition, the NWPAct contains other provisions including:

Assigning responsibility for the full payment of disposal cost to the owners and generators of high-level waste and spent nuclear fuel and, accordingly, creating a special Nuclear Waste Fund (NWF) within the Treasury of the United States.

Providing for contracts between the DOE and the owners and generators of spent nuclear fuel and high-level radioactive waste pursuant to which DOE is to take title to the spent nuclear fuel or high-level radioactive waste as expeditiously as possible, following commencement of repository operations and, in return for payment of fees established by the NWPAct, to begin disposal of the spent nuclear fuel or high-level radioactive waste not later than January 31, 1998.

Requiring evaluation of the use of civilian disposal capacity for the disposal of high-level radioactive waste resulting from atomic energy defense activities (defense waste). In April 1985, the President notified DOE of his determination that a separate defense waste repository was not necessary and directed DOE to proceed with arrangements for disposal of such waste. Fees, equivalent to those paid by commercial owners, must be paid for this service by the Federal government.

On December 22, 1987, the President signed into law the Budget Reconciliation Act; Subtitle A of Title V of which contained amendments to the NWPAct of 1982. The legislation directed DOE to characterize only the Yucca Mountain site in Nevada as a candidate site for the first repository.

The legislation also provided for the termination of site-specific activities at all candidate sites other than the Yucca Mountain site, within 90 days of enactment, and for phasing out, not later than 6 months after enactment, all research programs in existence designed to evaluate the suitability of crystalline rock as a potential repository host medium. In the event that the Yucca Mountain site proves unsuitable for use as a repository, the legislation requires DOE to terminate site-specific activities and report to Congress.

Further, the legislation authorized DOE to pay interest on overpayments of kilowatt hour (kWh) fees consistent with the December 5, 1985 ruling of the United States Court of Appeals as discussed in note 5. Interest on these overpayments of kWh fees was fully paid or credited as of September 30, 1990.

**UNITED STATES DEPARTMENT OF ENERGY
OFFICE OF CIVILIAN RADIOACTIVE WASTE MANAGEMENT**

Notes to Financial Statements

September 30, 1998

(Dollars in thousands unless otherwise noted)

Additionally, the legislation annulled and revoked DOE's Monitored Retrievable Storage (MRS) proposal, submitted to Congress on March 31, 1987, to construct an MRS facility in Oak Ridge, Tennessee. However, the legislation authorized DOE to site, construct and operate one MRS facility subject to certain conditions.

Although the NWPA prohibits the selection of an MRS site through a DOE-directed site-survey process until the repository site is recommended to the President, it allowed for expedited siting to proceed via a Nuclear Waste Negotiator, authorized to negotiate a proposed agreement with a State or Indian Tribe that would agree to host a repository or MRS facility. The Negotiator was to submit to Congress proposed agreements. No volunteer hosts were identified, and the Office of the Nuclear Waste Negotiator expired in January 1995.

(2) Significant Accounting Policies

Basis of Presentation – These financial statements include all activity related to OCRWM, including the Nuclear Waste Fund (NWF) and the Defense Nuclear Waste Disposal appropriation, used for nuclear waste disposal activities. They have been prepared from the books and records of OCRWM in accordance with the form and content for agency financial statements, specified by the Office of Management and Budget (OMB) in OMB Bulletin No. 97-01. Generally accepted accounting principles for the federal government consist of the following hierarchy:

- Individual standards agreed to by the Director of OMB, the Comptroller General, and the Secretary of the Treasury and published by OMB and the General Accounting Office;
- Interpretations related to the Statement of Federal Financial Accounting Standards issued by OMB;
- Requirements contained in OMB Bulletin No. 97-01, *Form and Content of Agency Financial Statements*; and
- Accounting principles published by other authoritative standard-setting bodies and other authoritative sources.

Basis of Accounting – OCRWM's financial statements are prepared using the accrual method of accounting. Under the accrual method, revenues are recognized when earned and expenses are recognized when a liability is incurred, without regard to receipt or payment of cash. OCRWM also uses budgetary accounting to facilitate compliance with legal constraints and to monitor its budget authority.

UNITED STATES DEPARTMENT OF ENERGY
OFFICE OF CIVILIAN RADIOACTIVE WASTE MANAGEMENT

Notes to Financial Statements

September 30, 1998

(Dollars in thousands unless otherwise noted)

Revenue Recognition – A one-time fee (see note 5) was recorded by the NWF as of April 7, 1983, for spent nuclear fuel generated prior to that date. Fees recognized by the NWF are based upon kWh of electricity generated by civilian nuclear reactors on or after April 7, 1983. Fees are recognized as revenue to the extent of expenses incurred, subject to congressional authorization (also see note 8). Revenue in excess of current expenses is deferred; deferred revenue is not segregated between Federal and nonfederal activities. The life cycle of the program is expected to extend over a period of over 100 years.

OCRWM's most recent Analysis of Total-System Life Cycle Cost of the Civilian Radioactive Program (TSLCC), issued in December 1998, estimated the cost of a surrogate single-repository system without interim storage to be \$43,700,000. Yucca Mountain, Nevada, was assumed as the location for the repository since it is the only site that DOE is authorized by law to characterize, but this does not constitute a predecision that Yucca Mountain is an acceptable site. Additional scenarios including a two-repository system with interim storage were not costed since DOE did not have current cost information or designs for a second repository and interim storage.

To estimate the share of the TSLCC that should be allocated to the disposal of defense high-level radioactive waste in the civilian repository, the methodology announced by DOE in the *Federal Register* in August 1987 was used. The December 1998 TSLCC analysis estimated the defense waste share of total system costs to be \$10,810,000.

The December 1998 TSLCC estimates reflect the Civilian Radioactive Waste Management Program as currently envisioned. Program changes since the last TSLCC, issued in September 1995, include increased program costs for additional waste quantities and types; updates to the repository design basis; a reanalysis of cost uncertainties associated with waste transportation; and an extended monitoring period. Program changes that reduced costs include the elimination of Multi-Purpose Canister (MPC) development and acquisition, and reductions in the scope of program management, development, and site characterization efforts.

OCRWM entered into an agreement with the Office of Environmental Management in September 1998, stipulating DOE's current and future liability for the disposal of DOE-owned spent nuclear fuel and high-level waste (DW). DOE's share of total Program cost cannot be determined finally until the program is completed and the final program costs are known. However, DOE's DW total cost share to date is estimated to be approximately \$2,103,000, including interest amounting to \$652,000, based on the methodology published in the *Federal Register* in August 1987. As of September 30, 1998, the NWF is due \$1,175,211 from DOE.

**UNITED STATES DEPARTMENT OF ENERGY
OFFICE OF CIVILIAN RADIOACTIVE WASTE MANAGEMENT**

Notes to Financial Statements

September 30, 1998

(Dollars in thousands unless otherwise noted)

For fiscal year 1998, Congress appropriated \$190,000 from the Defense Nuclear Waste Disposal appropriation to be used for nuclear waste disposal activities. Of the Fiscal Year 1996 appropriation, \$85,000 was restricted to obligation and expenditure on an interim storage facility. None of this restricted portion was used in Fiscal Year 1998, as statutory authority for an interim storage facility was not enacted. As of September 30, 1998, OCRWM had used the remaining Fiscal Year 1997 appropriation of \$45,300, and \$184,340 of the current year appropriation. Also, at September 30, 1998, OCRWM had obligated \$5,660 of the Fiscal Year 1998 appropriation for payment in 1999.

For Fiscal Year 1999, Congress has appropriated \$189,000 from the Defense Nuclear Waste Disposal appropriation to be used for nuclear waste disposal activities.

Investments – Investments, which consist of U.S. Treasury securities, are classified as available-for-sale and are reported at fair value in accordance with Statement of Financial Accounting Standards (SFAS) No. 115, *Accounting for Certain Investments in Debt and Equity Securities*, with unrealized gains and losses excluded from earnings and reported as a separate component of net position. OCRWM uses the effective interest rate method in determining book value of OCRWM investments.

General Property, Plant, and Equipment – Purchases of general property, plant, and equipment (PP&E) exceeding \$25 are capitalized if they have a useful life greater than two years. PP&E is depreciated on a straight-line basis over the estimated useful lives of the assets which range from 5 to 30 years. Maintenance costs are borne by OCRWM for equipment either on loan from or shared with other programs.

Costs of construction are capitalized as construction work in process. Upon completion or beneficial occupancy, the cost is transferred to the appropriate property account.

Accounts Receivable – Payment of accounts receivable will not be complete until OCRWM starts accepting waste. An allowance for doubtful accounts related to one-time spent fuel fees has not been recorded as of September 30, 1998, as OCRWM is not obligated to accept waste without payment of fees. Also see note 1.

Liabilities – Liabilities represent the amount of monies or other resources that are likely to be paid by OCRWM as the result of a transaction or event that has already occurred. However, no liability can be paid by OCRWM absent an appropriation. Liabilities for which an appropriation has not been enacted are therefore classified as liabilities not covered by budgetary resources and there is no certainty that the appropriation will be enacted. Also, liabilities of OCRWM arising from other than contracts can be abrogated by the government, acting in its sovereign capacity.

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Accrued Annual Leave – Federal employees’ annual leave is accrued as it is earned, and the accrual is reduced annually for actual leave taken and increased for leave earned. Each year, the accrued annual leave balance is adjusted to reflect the latest pay rates. To the extent that current or prior year appropriations are not available to fund annual leave earned but not taken, funding will be obtained from future financing sources. Sick leave and other types of nonvested leave are expended as taken.

Tax Status –OCRWM, as a part of the Department of Energy which is a Federal agency, is not subject to Federal, State, or local income taxes.

Changes in Accounting Principle – In 1998, OCRWM implemented Statement of Federal Financial Accounting Standards (SFFAS) No. 4, *Managerial Cost Accounting Concepts and Standards for the Federal Government* effective October 1, 1997. The effect of this standard is the creation of a new financial statement – the statement of net cost.

In 1998, OCRWM also implemented Statement of Federal Financial Accounting Standards (SFFAS) No. 7, *Accounting for Revenue and Other Financing Sources and Concepts for Reconciling Budgetary and Financial Accounting*, effective October 1, 1997. SFFAS No. 7 requires that the NWF properly classify, recognize, and measure resource inflows to the cost of services performed and identify total budgetary resources. As a result, OCRWM ensured that the full cost of providing goods and services to other federal entities and the public is captured and identified. SFFAS No. 7 also requires two new financial statements – the Statement of Budgetary Resources and the Statement of Financing.

First Repository Costs – For the year ended September 30, 1998, first repository costs consist primarily of Yucca Mountain costs.

(3) Fund Balance with Treasury

A summary of fund balance with the U.S. Treasury as of September 30, 1998 is as follows:

Nuclear Waste Fund	\$ 105
Defense Nuclear Waste Disposal Appropriation	<u>90,660</u>
	<u>\$ 90,765</u>

Appropriated funds represent appropriations received for disposal costs relating to Defense Nuclear Waste. Of this amount, \$85,000 was restricted to obligation and expenditure on an interim storage facility.

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(4) Investments

For the year ended September 30, 1998, the NWF received proceeds of \$1,954,979, from the sale of securities. The realized gain on the sale using the specific identification method for the year ended September 30, 1998 was \$50. During 1998, the change in net unrealized holding gain on available-for-sale securities included in net position was \$774,018.

Accrued interest receivable on investments as of September 30, 1998, totaled \$83,857.

The gross unrealized gain on available-for-sale securities was \$893,981 for the year ended September 30, 1998.

Investments consisting of U.S. Treasury securities held as of September 30, 1998 consisted of the following:

	<u>Cost</u>	<u>Amortized (premium) discount, net</u>	<u>Investments, net</u>	<u>Investments at fair value</u>
Intragovernmental securities available for sale:				
Marketable	\$ 857,056	5,958	863,014	868,115
Due after 1 year but within 5 years	1,523,205	(86,329)	1,433,751	1,501,540
Due after 5 years but within 10 years	459,905	(34,533)	428,497	463,732
Due after 10 years	<u>4,964,906</u>	<u>26,517</u>	<u>4,991,423</u>	<u>5,777,279</u>
	<u>\$ 7,805,072</u>	<u>(88,387)</u>	<u>7,716,685</u>	<u>8,610,666</u>

(5) Receivables Due from Utilities

Owners and generators of civilian spent nuclear fuel and high-level radioactive waste have entered into contracts with DOE for disposal services and for payment of fees to the NWF.

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The NWPA specifies two types of fees to be paid to the NWF for disposal services: (a) a one-time charge per kilogram of heavy metal in solidified high-level waste or spent nuclear fuel existing prior to April 7, 1983; and (b) a one mil per kWh fee on all net electricity generated and sold by civilian nuclear power reactors on or after April 7, 1983. The Secretary shall annually review the adequacy of the fees established. In the event the Secretary determines either insufficient or excess revenue is being collected, the Secretary shall propose an adjustment to the fee to ensure full cost recovery. The contracts between DOE and the owners and generators of the waste provide three options for payment of the one-time spent fuel fee, one of which must have been selected by June 30, 1985, or within two years of contract execution. The options were:

Payment of the amount due, plus interest earned from April 7, 1983, in 40 quarterly installments, with the final payment due on or before the first scheduled delivery of spent fuel to DOE;

Payment of the amount due, plus interest from April 7, 1983, in a single payment, any time prior to the first delivery of spent fuel to DOE; or

Payment of the amount due, any time prior to June 30, 1985, or two years after contract execution, in the form of a single payment, with no interest due.

Under options (1) and (2), interest accrues from April 7, 1983, to date of first payment, at the 13-week Treasury bill rate compounded quarterly. Under option (1), beginning with the first payment, interest is calculated at the 10-year Treasury note rate in effect at the time.

During 1998, there were no payments or adjustments of one-time spent fuel fees by owners and generators of civilian high-level waste and spent nuclear fuel.

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Public and intragovernmental receivables from utilities at September 30, 1998 were as follows:

Current portion of accounts receivable:

Kilowatt hour fees:

Public	\$ 144,321
Intragovernmental	<u>9,848</u>

Total current portion of accounts receivable	<u>154,169</u>
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Public one-time spent fuel fees:

Option (1)	143,531
Option (2)	<u>736,958</u>

880,489

Public interest on one-time spent fuel fees:

Option (1)	231,533
Option (2)	<u>1,183,812</u>

1,415,345

Total long-term accounts receivable from Public	<u>2,295,834</u>
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Total accounts receivable	\$ <u><u>2,450,003</u></u>
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(6) General Property, Plant, and Equipment, Net

General property, plant, and equipment and related accumulated depreciation consisted of the following at September 30, 1998:

General property, plant, and equipment	\$ 87,479
Less accumulated depreciation	<u>(59,367)</u>

Net book value	\$ <u><u>28,112</u></u>
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**UNITED STATES DEPARTMENT OF ENERGY
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September 30, 1998

(Dollars in thousands unless otherwise noted)

(7) Unexpended Appropriations

Unexpended appropriations as of September 30, 1998 consisted of the following:

	Nuclear Waste Fund	Defense Waste Disposal Appropriation	Total
Unexpended appropriations:			
Unobligated:			
Available	\$ 14,530	—	14,530
Unavailable	—	85,000	85,000
Undelivered orders	38,585	4,256	42,841
Total	<u>\$ 53,115</u>	<u>89,256</u>	<u>142,371</u>

(8) Financing

The NWPA provides that financing for the NWF consist of:

- Unexpended balances available on the date of enactment for functions or activities incident to the disposal of civilian high-level radioactive waste or civilian spent nuclear fuel.
- Funds appropriated by Congress.
- Fee payments.
- Investment income from authorized investments.

Expenditures are made from the NWF subject to congressional appropriation. Investments are made in U.S. obligations from funds in excess of current needs. If, at any time, monies available in the NWF are insufficient to discharge responsibilities under the NWPA, borrowings may be made from the U.S. Treasury. The NWPA limits the NWF from incurring expenditures, entering into contracts and obligating amounts to be expended, except as provided in advance by appropriation acts.

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(9) Transfer Appropriations

During 1998, Congress authorized certain funds to be transferred directly from the NWF to various entities to pay for necessary expenses of OCRWM. Amounts transferred consisted of:

Nuclear Regulatory Commission	\$ 19,000
Nuclear Waste Technical Review Board	<u>2,600</u>
	<u>\$ 21,600</u>

The Nuclear Waste Technical Review Board (Board) was established under the Amendments Act. The Board, an independent establishment within the executive branch of the U.S. government, was established to evaluate the technical and scientific validity of activities undertaken by the Secretary, including site characterization activities and activities relating to the packaging or transportation of high-level radioactive waste or spent nuclear fuel.

(10) Pension Plan

DOE employees working for OCRWM are covered by the Civil Service Retirement System (CSRS) or the Federal Employees Retirement System (FERS). As required by law, employees make contributions to the plans based on a percentage of their salaries with an amount contributed by OCRWM in accordance with the required retirement system regulations. Data regarding the CSRS and the FERS actuarial present value of accumulated benefits, assets available for benefits, and unfunded pension liability are not available to individual departments and agencies and therefore are not disclosed by OCRWM. As such, reporting is the responsibility of the U.S. Office of Personnel Management.

Under Statement of Federal Financial Accounting Standards (SFFAS) No. 5, *Accounting for Liabilities of the Federal Government*, an employer entity is required to recognize an expense for its employees' retirement benefits equal to the service costs for these employees for the year based on the plans' actuarial cost methods and assumptions. The difference between the retirement benefit expense and contributions made by the entity is reported as an imputed financing source as these costs will ultimately be funded by the Office of Personnel Management (OPM). As a result, OCRWM recognized total retirement expense of \$1,373 as of September 30, 1998, and an imputed financing source of \$1,102 to reflect the portion of 1998 retirement expense to be paid by OPM. The retirement benefit expenses were computed in accordance with cost factors provided by OPM.

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(11) Transactions With Other Government Agencies

The NWPAA established the Office of Civilian Radioactive Waste Management (OCRWM) within DOE to carry out the provisions of the NWPAA and created a separate fund in the Treasury of the United States. All of the investment and borrowing powers of the NWF are limited to transactions with the U.S. Treasury. In discharging its obligations under the NWPAA, DOE contracts for services with numerous contractors including other Federal government agencies. Further, significant administrative services are provided by DOE.

As of September 30, 1998, OCRWM owed other government agencies \$1,813 for services and costs provided to OCRWM. For the year ended September 30, 1998, OCRWM had incurred costs of \$16,606, for services and costs provided by other government agencies.

As discussed in note 2, OCRWM is owed \$1,175,211 as of September 30, 1998 from DOE for the disposal of defense high-level waste in civilian repositories. This receivable is comprised of a current portion of \$194,660 and long-term portion of \$980,551.

(12) Litigation

DOE's Waste Acceptance Obligation

OCRWM is involved with various matters of litigation relating to its obligation in a standard contract (Standard Contract) with utilities to initiate waste acceptance by January 31, 1998, the date specified in NWPAA of 1982, as amended. A summary of those actions is included below.

Indiana Michigan and Northern States Cases

The Court of Appeals for the District of Columbia Circuit has ruled that the Standard Contract (1) imposes an unconditional obligation on DOE to initiate waste acceptance by January 31, 1998 and (2) offers a potentially adequate remedy for the failure of DOE to meet this obligation. Indiana Michigan Power Co. v. U.S. Department of Energy, 88 F.3d 1272 (D.C. Cir. 1996); Northern States Power Co. v. U.S. Department of Energy, 128 F.3d 754 (D.C. Cir. 1997). In addition, the Northern States decision precludes DOE from invoking the unavoidable delays clause of the Standard Contract; and from asserting traditional sovereign acts defenses in any suits for damages in the Court of Federal Claims. DOE did not appeal the decision in the Indiana Michigan case. DOE and the State of Michigan filed petitions for certiorari in the Northern States case, which the Supreme Court denied on November 30, 1998.

The Indiana Michigan and Northern States cases do not have a direct impact on the NWF because no contractual damages were sought and the court denied equitable relief, such as an escrow of funds. All other cases discussed in this section, however, are based on the holdings in these two cases.

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It is too early to evaluate the ultimate impact on OCRWM of claims based on the decisions in the Indiana Michigan and Northern States cases. Resolution of any such claims will involve highly fact-specific and individualized decisions about the costs incurred by each contract holder as a result of the delay of the Department in meeting its obligation under the Standard Contract. The potential impact, however, is significant. The Department has estimated possible damages to be between \$500 million and \$1 billion if all utilities filed claims. Some utilities' representatives have estimated damages totaling \$45 billion.

Claims based on the decisions in the Indiana Michigan and Northern States cases could impact the NWF in one of two ways. First, if a court determines a contract holder can and must pursue its contractual remedies and proceed under the delays clause of the Standard Contract, the contract holder may be found eligible to receive equitable adjustments of its on-going nuclear waste fees. This "equitable adjustment" of fees would reduce revenues to the NWF. Alternatively, if a court determines a contract holder can pursue a damage suit for breach of contract, the contract holder may obtain a judgment against the Department for money damages. It is unclear whether such a judgment would be paid out of the Judgment Fund, the NWF or some other source of funds. If a judgment were paid out of the Judgment Fund, there is a possibility the Judgment Fund would ultimately be reimbursed by the NWF or other funds appropriated to the Department. If the size of the NWF were to be substantially affected by either equitable adjustments or payments of judgments, the Department might then be obligated to propose fee adjustments pursuant to the NWPA's "full cost recovery" provision, 42 U.S.C. 10222(a)(4). Any such fee adjustments would be "across the board" and applicable to all utilities with currently operating reactors.

Pending Cases: U.S. Court of Appeals for the District of Columbia Circuit

As discussed in detail below, several utilities have brought cases in the U.S. Court of Appeals for the District of Columbia that contain claims based on the decisions in the Indiana Michigan and Northern States cases. The Department believes that, after the exhaustion of any administrative remedies under the Standard Contract, the U.S. Court of Federal Claims is the proper venue for claims based on the decisions in the Indiana Michigan and Northern States cases and anticipates that the Court of Appeals will agree with this view. If, however, the Court of Appeals permits these claims to proceed, it is too early to evaluate their likely outcome. As discussed previously, a judgment against the Department could affect the NWF.

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Consolidated Edison Company of New York v. U.S. Department of Energy, case no. 98-1358.

Several utilities filed a petition for review of the Department's fee adequacy determination. In addition, they sought leave to file a complaint in the D.C. Circuit seeking damages and specific relief for the Department's failure to commence disposal of their spent nuclear fuel. These cases were held in abeyance pending disposition by the U.S. Supreme Court of petitions for certiorari filed in Northern States, discussed above. The denial of certiorari on November 30, 1998 has revived the cases. The utilities have filed a motion for appointment of a special master to hear the case which the Department opposed. Briefing of jurisdictional issues will begin in January 1999.

General Electric Company v. U.S. Department of Energy, case no. 98-1356; Arizona Public Service Commission v. U.S. Department of Energy, consol. cases no. 98-1346 and 98-1348.

These cases involve petitions filed in the Court of Appeals for review of the Department's failure to commence disposal of spent nuclear fuel in an attempt to ensure that the decision in the Northern States case applies to utilities that were not parties to that case. On January 5, 1999, the Court of Appeals ordered the petitioners to show cause why their petitions should not be dismissed in light of the decision in the Northern States case that the Standard Contract provides a potentially adequate remedy. While the Department believes it is likely the petitions will be dismissed, it is possible the utilities then will file suit in the United States Court of Federal Claims or pursue an administrative claim with the Contracting Officer for the Standard Contract.

Pending Cases: U.S. Court of Federal Claims

As discussed in more detail below, several utilities have brought cases in the U.S. Court of Federal Claims that contain claims based on the decisions in the Indiana Michigan and Northern States cases. In the first three cases, the Court of Federal Claims has found that the Department has breached its contracts with the three utilities, each of which has only one shutdown reactor, and that no contractual remedy exists because these utilities are not paying ongoing fees. The Department currently is engaged in discovery to determine the amount of damages to be paid. It is too early to evaluate the ultimate amounts of the judgments against the Department in these cases. As discussed previously, these judgments could affect the NWF.

In the other seven cases, the Court of Federal Claims has not issued any final decisions. The Department is taking the position in these cases that the utilities, which have operating reactors and are subject to the payment of ongoing fees, must exhaust the administrative process at the Department before filing suit in the Court of Federal Claims. It is unclear whether there ultimately will be a contractual remedy or a court judgment in any of these cases. As discussed previously, an equitable adjustment of fees or a judgment against the Department could affect the NWF.

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Yankee Atomic Electric Co. v. United States, case no. 98-126C, Connecticut Yankee Atomic Power Company v. United States, case no. 98-154C, and Maine Yankee Atomic Power Company v. United States, case no. 98-474C.

On February 18, 1998, the Yankee Atomic Electric Company filed suit for damages in the amount of \$70 million associated with the extended storage of 127 metric tons of spent nuclear fuel onsite at its shutdown nuclear plant in Massachusetts. Yankee asserted that while it had paid the contractual fees in full, the Department did not commence disposal by January 31, 1998, and had thus breached the Standard Contract. The Department argued that any delay in performance was redressable under the avoidable delays clause of the Standard Contract and that Yankee's sole remedy is a claim for equitable adjustment through administrative procedures described in the contract, as opposed to a suit for damages based on a breach of contract claim.

On October 29, 1998, the U.S. Court of Federal Claims found that the utility need not exhaust its contractual remedies and that the Department was in breach of contract. It therefore granted summary judgment for Yankee on the issue of the government's liability. The Court also stated that where complete relief is not available under a contract, the controversy is not limited to administrative remedies in the contract ("Disputes" clause) and may be tried in court. The Court found that statutory restrictions on the adjustment of the one-time fee precluded the Department from retroactively adjusting Yankee's charges to reflect its onsite storage costs and that the Department's authority to make expenditures from the NWF was restricted to specifically listed activities which do not include paying the costs of onsite storage.

Similar suits had been filed by Connecticut Yankee and Maine Yankee seeking \$90 million and \$128 million respectively for the Department's failure to remove spent nuclear fuel from their shutdown reactor sites. On October 30, 1998 and November 3, 1998, the U.S. Court of Federal Claims issued orders finding that, for the same reasons stated in the Yankee Atomic decision, the Department is contractually liable to the utilities.

The next phase of the "Yankee" cases will determine the damages payable. While it is not expected that the utilities will receive all of the damages that they seek, potential government liability from these three cases could be in the tens of millions of dollars. As discussed previously, these judgments could affect the NWF.

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Northern States Power Company v. United States, case no. 98-484C; Commonwealth Edison Company v. United States, case no. 98-621C; Southern Nuclear Operating Company, including Alabama Power Company and Georgia Power Company v. United States, case no. 98-614C; Duke Power, a Division of Duke Energy Corporation v. United States, case no. 98-485C; Florida Power and Light Company v. United States, case no. 98-483C; Indiana Michigan Power Company v. United States, case no. 98-486C; Sacramento Municipal Utility District v. United States, case no. 98-488C.

In addition to the “Yankee” cases, seven other utilities, most with currently operating reactors, have filed suits in the U.S. Court of Federal Claims seeking damages totaling over \$4 billion. In several of these cases, the utilities have motions for summary judgment on contract liability pending that are similar to those filed in the “Yankee” cases. In opposition, the Department has filed motions to dismiss the cases on the ground that the utilities have not exhausted their contractual remedies by applying for equitable adjustment of their ongoing fees. Depending on how the Court decides these cases, damages could be paid out of the Judgment Fund or the NWF, or there could be an equitable adjustment of fees that would affect revenues currently being deposited into the NWF. While it is too early to evaluate the ultimate outcome of these cases, the potential government liability from these cases could be substantial but most likely considerably less than the \$4 billion claimed in the complaints. As discussed previously, an equitable adjustment of fees or a judgment against the Department could affect the NWF.

Should the Department not prevail on its motion to dismiss for the utilities’ failure to exhaust their administrative remedies, it is likely that many more utilities will file similar suits for damages. If the Department does prevail, it is likely that the seven utilities, as well as many other utilities would file administrative claims with the Department’s Contracting Officer.

Pending Administrative Claim

On August 21, 1998, one contract holder submitted a proposed bilateral modification and request for equitable adjustment to the Department’s Contracting Officer for the Standard Contracts. The proposal requests non-monetary and monetary relief for the Department’s delay in disposing of the contract holder’s spent nuclear fuel. The Department is in the process of considering the proposal. If negotiations are unsuccessful, the Department anticipates that the contract holder may file a certified claim pursuant to Article XVI (“Disputes” of the standard contract) and, if the Contracting Officer denies such a claim, this decision may be appealed to the Department of Energy Board of Contract Appeals (EBCA). A decision by the Contracting Officer or the EBCA to grant an equitable adjustment of fees could affect the fund.

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Pending Case: U.S. District Court, District of Minnesota

Patrick Roedler v. U.S. Department of Energy, case no. 98-1843.

On August 7, 1998, the plaintiffs in this case, ratepayers of the Northern States Power Company who are not signatories to the Standard Contract, filed suit alleging essentially the same breach of contract claims alleged in the Northern States Court of Claims cases above. Plaintiffs contend that the Department's failure to commence accepting spent nuclear fuel by January 31, 1998, has caused them substantial damages due to continuing onsite storage costs at Northern States' Monticello and Prairie Island nuclear generating plants. They assert that if onsite disposal of Prairie Island's spent nuclear fuel does not begin before 2004, the facility's onsite storage capacity will be exhausted and that ratepayers will incur substantial payments associated with a premature shutdown of the Prairie Island plant. Relying on the Tucker Act, which waives the United States sovereign immunity where there exist express or implied in fact contracts, the plaintiffs claim that they are entitled to recover over \$340 million. The Department has moved to dismiss on the ground that the plaintiffs have no contractual rights in this case and that plaintiffs are litigating the same breach of contract claim as in Northern States. It appears that the Department's chances of prevailing on the merits are good. There is a low probability of an impact on the NWF.

Other Matters

OCRWM is involved in several other matters of litigation in its normal course of business. Management does not believe that the ultimate resolution of these matters will have any material adverse impact on the NWF.

(13) Additional Waste

In November 1993, DOE's Office of Environment, Safety and Health issued a report that identified additional waste owned by the Department, from both commercial and defense projects, that may require disposal in a civilian repository. OCRWM has been in the process of evaluating the additional costs for disposal of these waste forms. The need to consider additional waste forms has raised new issues that complicate cost projections as the volume of wastes requiring disposal, and the corresponding cost of regulatory compliance, facility and equipment designs, and cost of operations are unknown at this time. The range of costs (\$200 to \$500) presented in the notes to OCRWM's financial statements as of September 30, 1995 are incomplete and have not been revised. Therefore, no amounts have been recorded in the accompanying financial statements as of September 30, 1998, because the amount of fees attributable to this waste is not reasonably able to be estimated at this time. OCRWM is not obligated to accept any waste until the cost of its disposal is paid by the owners/generators of the waste.

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High-level radioactive waste owned by the State of New York and currently stored at the West Valley Demonstration Project site, is of a type that may be disposed of in a Federal repository if the State of New York has entered into a contractual agreement with DOE, similar to the provisions of 10 CFR Part 961. To date, the State of New York has not entered into such an agreement. If the methodology announced by DOE in the Federal Register in August 1987, for the calculation of the defense high-level waste share of program costs were used, the share of total-system costs allocated to the disposal of West Valley high-level waste would be approximately \$150 million. This amount has not been recorded in the financial statements as of September 30, 1998, because, at this time, DOE is not legally required to take title to or dispose of the West Valley high-level waste, nor is the State of New York required to enter into a disposal contract with DOE if it does not plan to dispose of the high-level waste in a Federal repository.

(14) Deferred and Earned Revenue

As described in note 2, all fees, both kWh fees and Defense high-level waste fees, as well as the related interest, are recognized as revenue to the extent of expenses incurred. Revenue in excess of current expenses is deferred.

Deferred revenue at September 30, 1998 was as follows:

Fees collected:	
kWh fees:	
Public	\$ 567,343
Intragovernmental	41,039
Defense high-level waste fees, intragovernmental	210,024
Interest on one-time spent fuel fees, public	115,606
Interest, intragovernmental:	
Income on investments	466,653
Defense high-level waste fees	156,072
Net gain on sale of investments	50
Other revenue	71
	<hr/>
Total revenues	1,556,858
Less – earned revenue	<hr/> (428,042) <hr/>
Change in deferred revenue	1,128,816
Deferred revenue – September 30, 1997	<hr/> 10,039,086 <hr/>
Deferred revenue – September 30, 1998	\$ <hr/> <hr/> 11,167,902 <hr/> <hr/>

**UNITED STATES DEPARTMENT OF ENERGY
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(15) Prior Period Adjustment

The prior period adjustment reflected in the statement of changes in net position represents a correction in the recognition of deferred revenue in prior periods.



2001 M Street, N.W.
Washington, DC 20036

Independent Auditors' Report on Internal Controls Over Financial Reporting

Office of Civilian Radioactive Waste Management
United States Department of Energy:

We have audited the financial statements of the Office of Civilian Radioactive Waste Management (OCRWM) as of and for the year ended September 30, 1998, and have issued our report thereon dated January 15, 1999. We conducted our audit in accordance with generally accepted auditing standards; the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States; and Office of Management and Budget (OMB) Bulletin No. 98-08, *Audit Requirements for Federal Financial Statements*. Our audit report included a paragraph emphasizing contingencies arising from several matters of litigation.

The management of OCRWM is responsible for establishing and maintaining internal control over financial reporting. In fulfilling this responsibility, estimates and judgments by management are required to assess the expected benefits and related costs of internal control policies and procedures. The objectives of internal control are to provide management with reasonable, but not absolute, assurance that (1) transactions are executed in accordance with laws governing the use of budget authority and other laws and regulations that could have a direct and material effect on the financial statements, and certain other laws, regulations, and government-wide policies identified by the OMB as applicable to OCRWM; (2) assets are safeguarded against loss from unauthorized acquisition, use, or disposition; (3) transactions are properly recorded, processed, and summarized to permit the preparation of financial statements in accordance with applicable accounting principles described in Note 2 to the financial statements; and (4) transactions and other data that support reported performance measures are properly recorded, processed, and summarized to permit preparation of performance information in accordance with criteria stated by management. Because of inherent limitations in internal control, fraud may nevertheless occur and not be detected. Also, projection of any evaluation of internal controls to future periods is subject to the risk that procedures may become inadequate because of changes in conditions or that the effectiveness of the design and operation of policies and procedures may deteriorate.

In planning and performing our audit, we considered OCRWM's internal control over financial reporting by obtaining an understanding of OCRWM's significant internal controls, determined whether these internal controls had been placed in operation, assessed control risk, and performed tests of controls in order to determine our auditing procedures for the purpose of expressing our opinion on the financial statements and not to provide assurance on the internal control over financial reporting. Consequently, we do not provide an opinion on internal controls.

Our consideration of internal control over financial reporting would not necessarily disclose all matters in the internal control over financial reporting that might be reportable conditions, under standards issued by the American Institute of Certified Public Accountants and OMB Bulletin No. 98-08 and, accordingly, would not necessarily disclose all reportable conditions that are material weaknesses. Reportable conditions are matters coming to our attention relating to significant deficiencies in the design or operation of the internal controls that, in our judgment, could adversely affect OCRWM's ability to record, process, summarize, and report



financial data consistent with the assertions by management in the financial statements. Material weaknesses are reportable conditions in which the design or operation of one or more of the internal control components does not reduce to a relatively low level the risk that misstatements, in amounts that would be material in relation to the financial statements being audited, may occur and not be detected within a timely period by employees in the normal course of performing their assigned functions. We noted no matters involving the internal control and its operation that we considered to be material weaknesses as defined above.

With respect to internal controls related to performance measures determined by management to be key and reported in the Overview to the financial statements, our evaluation was limited to obtaining an understanding of relevant internal control policies and procedures designed to permit preparation of reliable and complete performance information, and assessing control risk (the risk that a material misstatement in a reported performance measure could occur and not be prevented or detected on a timely basis by OCRWM's internal controls). Our procedures were not designed to provide assurance on internal control over reported performance measures, and accordingly, we do provide an opinion on such controls.

However, we noted other matters involving internal controls and their operation that we have reported to management of the NWF in a separate letter.

This report is intended solely for the information and use of the management of OCRWM and the United States Department of Energy and is not intended to be and should not be used by anyone other than these specified parties.

HPMG LLP

January 15, 1999



2001 M Street, N.W.
Washington, DC 20036

Independent Auditors' Report on Compliance with Laws and Regulations

Office of Civilian Radioactive Waste Management
United States Department of Energy:

We have audited the financial statements of the Office of Civilian Radioactive Waste Management (OCRWM) as of and for the year ended September 30, 1998, and have issued our report thereon dated January 15, 1999. We conducted our audit in accordance with generally accepted auditing standards; the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States; and Office of Management and Budget (OMB) Bulletin No. 98-08, *Audit Requirements for Federal Financial Statements*, except for those portions of the Bulletin that relate to the Federal Financial Management Improvement Act (FFMIA) of 1996. The Department of Energy Office of Inspector General is responsible for determining compliance with FFMIA. Our audit report included a paragraph emphasizing contingencies arising from several matters of litigation.

The management of OCRWM is responsible for complying with laws and regulations applicable to the NWF. As part of obtaining reasonable assurance about whether OCRWM's financial statements are free of material misstatement, we performed tests of its compliance with certain provisions of laws and regulations, noncompliance with which could have a direct and material effect on the determination of financial statement amounts, and certain other laws and regulations specified in OMB Bulletin No. 98-08. However, providing an opinion on compliance with certain provisions of laws and regulations was not an objective of our audit. Accordingly, we do not express such an opinion.

The results of our tests of compliance with the laws and regulations described in the preceding paragraph disclosed no instances of noncompliance that are required to be reported herein under *Government Auditing Standards* and OMB Bulletin No. 98-08.

This report is intended solely for the information and use of the management of OCRWM and the United States Department of Energy and is not intended to be and should not be used by anyone other than these specified parties.

KPMG-LLP

January 15, 1999

